

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

2016 AUG 19 A 11:42

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW BISSONNETTE,

Defendant.

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA  
Civil Action No. 1:16cv1070

**COMPLAINT**

**INTRODUCTION**

The United States of America brings this civil action for breach of contract and fiduciary obligations against Defendant Matthew Bissonnette, a former senior non-commissioned officer in the U.S. Navy, who published a book without submitting the manuscript for prepublication review and gave presentations using materials that were not cleared for public release, in violation of his non-disclosure agreements and obligations to the United States.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1345.

2. Venue is proper in the Eastern District of Virginia pursuant to 28 U.S.C. §1391(b)(2).

**PARTIES**

3. Plaintiff is the United States of America (hereafter “United States” or “Government”).

4. Defendant Matthew Bissonnette is a former senior non-commissioned officer in the U.S. Navy, which is headquartered at the Pentagon, located in Arlington, Virginia. The Department of Defense's Office of Prepublication and Security Review is also headquartered at the Pentagon.

### **FACTUAL ALLEGATIONS**

5. Bissonnette served as a chief petty officer and special warfare operator (SEAL) in the U.S. Navy. On January 24, 2007, while assigned to the Naval Special Warfare Development Group, Bissonnette signed four documents: (1) a Classified Information Non-Disclosure Agreement; (2) a Sensitive Compartmented Information Nondisclosure Statement; (3) a Sensitive Compartmented Information Indoctrination Memorandum; and (4) a Personal Attestation, stating that he understood his responsibility to protect classified national security information.

6. Sensitive Compartmented Information (SCI) is information or material protected within Special Access Programs. Special Access Programs are established only for programs required by statute or upon a finding that (1) the vulnerability of, or threat to, specific information is exceptional, and (2) the normal criteria for determining eligibility for access to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure. Executive Order 13526 at § 4.3(a). SCI involves or derives from intelligence sources and methods and is classified.

7. In signing the SCI Nondisclosure Statement, Bissonnette expressly agreed to a prepublication requirement. Specifically, he agreed to submit to the Government for pre-publication security review any writing or other preparation in any form that contains or purports to contain SCI or a description of activities that produce or relate to SCI. He

further agreed that his prepublication review obligations would apply while he had access to SCI and thereafter.

8. Bissonnette also agreed in signing these documents that the U.S. Government was entitled to all royalties or other payments resulting from an unauthorized disclosure of classified information, including SCI.

9. By signing the Classified Information Non-Disclosure Agreement and the SCI Nondisclosure Statement, Bissonnette expressly acknowledged that he understood and accepted that the United States Government was placing special confidence and trust in him by granting him access to classified information, including SCI.

10. Bissonnette's prepublication review obligation is reinforced by Department of Defense (DoD) regulations. *See DoD Directive 5230.09, Clearance of DoD Information for Public Release* §§ 2.a, 4.b, 4.f (Aug. 22, 2008) (providing that all personnel must submit for security review and clearance proposed books pertaining to military matters or national security).

11. Bissonnette voluntarily, willingly, and knowingly entered into the agreements described herein, which were executed as a condition of his being granted access to classified information, including SCI.

12. During his service with the U.S. Navy, Bissonnette was assigned to various positions of trust and was granted regular access to classified information, including SCI. In assigning Bissonnette to positions of trust and granting him access to classified information, the U.S. Navy relied on the expectation that Bissonnette would abide by the obligations set forth in the agreements described herein and his fiduciary duties, including the prepublication review requirement.

13. On April 20, 2012, Bissonnette signed a SCI Debriefing Memorandum, documenting that he was again reminded of his continuing obligation to comply with the terms of the SCI Nondisclosure Statement that he signed previously.

14. In September 2012, Bissonnette, under the pen name Mark Owen, published a book entitled *No Easy Day: The Firsthand Account of the Mission That Killed Osama Bin Laden* (“*No Easy Day*”).

15. Bissonnette was obligated to submit the book to the Government for prepublication security review and not to publish it until receiving written permission to do so.

16. Bissonnette did not, at any time, submit the manuscript for *No Easy Day* to the Government for prepublication security review, nor did he obtain the Government’s approval prior to the book’s publication.

17. Bissonnette has acknowledged that he was required to seek prepublication review of *No Easy Day* and that he breached his nondisclosure obligations by failing to do so.

18. In January 2013, Bissonnette began giving leadership presentations using slides that contain content related to his service in the U.S. Navy.

19. On March 26, 2013, Bissonnette, through his attorney, submitted the slides from his leadership presentation for prepublication security review, as required by his non-disclosure agreements.

20. Bissonnette was obligated to submit his slides for prepublication security review and not to disclose the information on the slides until he received the Government’s written permission to do so. From January to April 23, 2013, Bissonnette

used the content in his slides to give at least six separate leadership seminars before he received written authorization from the Government to publicly disclose the information on the slides.

### **CAUSES OF ACTION**

#### **Count One: Breach of Contract and Fiduciary Duty Related to *No Easy Day***

21. All preceding paragraphs are incorporated by reference, as if fully set forth herein.

22. Bissonnette voluntarily, willingly, and knowingly entered into contractual agreements with the United States of America when he signed his Classified Information Non-Disclosure Agreement and SCI Nondisclosure Statement, and other documents described herein, and he agreed to be bound by their terms and conditions. Among those terms and conditions was an express requirement that Bissonnette submit to the Government for prepublication security review any written manuscript containing or relating to classified information, including SCI, and that he refrain from publishing any such manuscript until he received written permission from the Government to do so.

23. Bissonnette breached his Classified Information Non-Disclosure Agreement and SCI Non-Disclosure Statement, and other agreements memorialized in the documents described herein, by failing to submit his *No Easy Day* manuscript to the Government for prepublication security review before disclosing the manuscript to his publisher and causing it to be published.

24. Under the common law and the specific terms of Bissonnette's agreements, Bissonnette had a fiduciary relationship with the United States based on trust and special confidence that derived from the facts that Bissonnette was a senior

noncommissioned officer in the U.S. Navy; transacted business on behalf of the Navy; was given access to classified national security information, including SCI; and entered into the Classified Information Non-Disclosure Agreement and SCI Nondisclosure Statement.

25. Bissonnette owed to the United States a fiduciary duty of loyalty to protect from unauthorized disclosure all information pertaining to intelligence sources and methods, to submit to the Government for its review any written material intended for publication that contains or purports to contain classified information or descriptions of activities that produce or relate to classified information, and not to publish or disseminate such material unless and until the Government provided its written approval.

26. Bissonnette breached his fiduciary duties by publishing *No Easy Day* without submitting it for prepublication security review or receiving the Government's permission to publish it.

27. By breaching his contractual and fiduciary duties with regard to *No Easy Day*, Bissonnette has harmed the United States by undermining its ability to use non-disclosure agreements and the prepublication security review process to protect sensitive national security information.

28. Bissonnette has been unjustly enriched by the proceeds and all other financial advantages resulting from the unauthorized publication of *No Easy Day*.

**Count Two: Breach of Contract and Fiduciary Duty**  
**Related to Leadership Presentations**

29. Paragraphs 1-19 above are incorporated by reference, as if fully set forth herein.

30. Bissonnette knowingly, willfully, and deliberately breached his Classified Information Non-Disclosure Agreement and SCI Nondisclosure Statement, and other documents described herein, by disclosing the slides used in his leadership presentation before the prepublication security review process was completed and prior to receiving written permission from the Government to disclose the information in the slides publicly.

31. Bissonnette also breached his fiduciary duties to the United States by disclosing the slides used in his leadership presentation before the prepublication security review process was completed and prior to receiving written permission from the Government.

32. By breaching his contractual and fiduciary duties with respect to the slides used in his leadership presentations, Bissonnette has harmed the United States by undermining its ability to use non-disclosure agreements and the prepublication security review process to protect sensitive national security information.

33. Bissonnette has been unjustly enriched by the proceeds and all other financial advantages resulting from the leadership presentations where he used slides that had not been approved by DoD.

**WHEREFORE**, the United States of America respectfully requests that the Court award the following relief:

A. Declare that Bissonnette has breached his contractual obligations, embodied in his Classified Information Non-Disclosure Agreement and SCI Nondisclosure Statement, as well as his fiduciary obligations;

B. Impose a constructive trust over, and require an accounting of, all monies, gains, profits, royalties, and other advantages that Bissonnette has derived, or will derive, from the publication, sale, serialization, or republication in any form, including any movie rights, of *No Easy Day*;

C. Require Bissonnette to relinquish the proceeds from *No Easy Day* to the United States;

D. Require Bissonnette to provide an accounting of all monies, gains, profits, royalties, and other advantages that Bissonnette derived from leadership presentations he gave before the Government completed the security review of his slides on April 23, 2015;

E. Require Bissonnette to relinquish the proceeds from leadership presentations he gave before April 23, 2015, to the United States;

F. Permanently enjoin Bissonnette from any further violation of his contractual and fiduciary obligations, including, but not limited to, authorizing, consenting to, or in any way permitting the republication of *No Easy Day*;

G. Grant to the United States such other relief as the Court may deem just and proper, including, but not limited to, the Government's costs herein.

Dated: August 19, 2016

Respectfully Submitted,

DANA J. BOENTE  
United States Attorney

BENJAMIN C. MIZER  
Principal Assistant Attorney General



ANTHONY J. COPPOLINO  
Deputy Director, Federal Programs Branch



R. JOSEPH SHER  
Assistant United States Attorney  
U.S. Attorney's Office,  
Eastern District of Virginia  
2100 Jamieson Ave.  
Alexandria, VA 22314  
Tel: (703) 299-3747  
Fax: (703) 299-3983  
[joe.sher@usdoj.gov](mailto:joe.sher@usdoj.gov)

RYAN B. PARKER  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
Telephone: (202) 514-4336  
Email: [ryan.parker@usdoj.gov](mailto:ryan.parker@usdoj.gov)

Dated: August 19, 2016

Counsel for the United States

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

2016 AUG 19 A 11:43

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW BISSONNETTE,

Defendant.

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Civil Action No. 1:16 cv 1070

**CONSENT DECREE**

This Consent Decree is entered into between Plaintiff the United States of America and Defendant Matthew Bissonnette, also known as Mark Owen, for the purpose of fully resolving all claims set forth in the Complaint filed in this case. The term "Parties" collectively refers to the United States and Bissonnette.

This is a civil action brought by the United States of America for permanent injunctive relief, a constructive trust, and other relief against Defendant Matthew Bissonnette, a former chief petty officer and special warfare operator in the U.S. Navy. The Complaint alleges that the Defendant signed various non-disclosure agreements during his military service and that he violated his contractual and fiduciary duties to the United States by (1) publishing the book *No Easy Day: The Firsthand Account of the Mission That Killed Osama Bin Laden* ("No Easy Day") without submitting it for prepublication security review and (2) using unapproved slides to give public leadership presentations.

The Defendant has voluntarily agreed to issue a public statement in the form agreed to by the Parties acknowledging that he was required to seek prepublication review of *No Easy Day* and that he made a mistake by failing to do so. After extensive negotiations, the Parties have consented to this decree to resolve the issues raised by the Complaint without further litigation.

It is therefore agreed, by and between the Parties, that the case should be resolved by the Court's entry of an Order with the following terms:

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 because this action has been commenced by the United States. Venue is proper in the Eastern District of Virginia pursuant to 28 U.S.C. § 1391(b)(2) because the U.S. Navy, an agency of the U.S. Government, is headquartered at the Pentagon, which is located in this District and Division in Arlington, Virginia. *See* 28 U.S.C. § 127(a) and (c) and Local Civil Rule 3(B)(1) and (C). Venue is also proper because the Department of Defense's Office of Prepublication and Security Review is located at the Pentagon.

2. A constructive trust for the benefit of the United States is hereby imposed over any and all revenues, gains, profits, royalties, and other financial advantages derived by the Defendant, or derived by the Defendant in the future, from the sale, serialization, republication rights in any form, television or movie rights, and other distribution for profit of the work entitled *No Easy Day*.

3. The Defendant shall pay to the United States any and all revenues, gains, profits, royalties, and other financial advantages derived by the Defendant, or derived by the Defendant in the future, from the sale, serialization, republication rights in any form, television or movie rights, and other distribution for profit of *No Easy Day*.

4. The Defendant is hereby permanently enjoined from further breaching the terms and conditions of his non-disclosure agreements and fiduciary duties to the United States in any way, including by taking any action to further publish or distribute, or to assist in further publication or distribution of, *No Easy Day* in any form or media.

5. The Defendant shall pay the Government all of the proceeds he has already received from the publication of *No Easy Day*, which to date total \$6,664,882.21, in accordance with the following schedule:

(A) Within thirty (30) days of the Court entering this Consent Decree, the Defendant shall pay the United States \$2,761,334.28;

(B) Within forty-eight (48) months of the entry of this Consent Decree, the Defendant shall pay the United States an additional \$1,379,527.93;

(C) Within six (6) months of the Court entering this Consent Decree, the Defendant shall file amended state and federal tax returns reflecting that all of the proceeds the Defendant has received from the publication of *No Easy Day*, including the \$2,524,020 he has paid in taxes on those proceeds, belong to the United States; and

(D) Within thirty (30) days of receiving any state or federal tax refunds that result from the filing of the amended tax returns required above, the Defendant shall pay the United States all refunds attributable to his proceeds from *No Easy Day*.

6. Within thirty (30) days of the Court entering this Consent Decree, the Defendant shall inform the publisher of *No Easy Day* that all of the Defendant's proceeds from the book belong to the Government and that all his royalties and other financial advantages must be delivered directly to the Government.

7. Within thirty (30) days of the Court entering this Consent Decree, the Defendant shall also pay to the United States \$100,000 from the proceeds of leadership presentations he gave using slides that had not been approved through the Government's prepublication security review process.

8. All payments to be made under this Consent Decree shall be made in accordance with instructions and procedures provided to the Defendant by counsel for the United States from the Department of Justice, Civil Division, Federal Programs Branch.

9. In consideration of the Defendant's obligations, as set forth in this Consent Decree, and conditioned upon the Defendant meeting those conditions, the United States will release and discharge the Defendant from any and all claims for civil liability related to the publication of *No Easy Day* and any and all claims for civil liability related to leadership presentations Bissonnette gave before April 23, 2013, except that the following claims of the United States are specifically reserved and are not released: (a) any liability arising under Title 26, U.S. Code (Internal Revenue Code); (b) any liability for future breaches of the Defendant's contractual or fiduciary duties; and (c) any liability based upon obligations created by this Consent Decree.

10. This Consent Decree is binding upon the Parties and their successors, agents, assigns, and transferees as of the date it is signed by the Parties.

11. This Consent Decree becomes an Order of the Court on the date it is approved.

12. If any provision of this Consent Decree is determined to be invalid or unenforceable for any reason, then such provision shall be treated as severed from the remainder of the Consent Decree and shall not affect the validity and enforceability of all

of its other provisions, as long as such severance does not materially change the Parties' rights and obligations.

13. The undersigned counsel are fully authorized to enter into this Consent Decree on behalf of their respective clients.

14. The Parties acknowledge that they have, through their respective counsel, mutually participated in the preparation of this Consent Decree, and it is agreed that no provision hereof shall be construed against any party hereto by virtue of the activities of that party or its attorney.

15. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

16. Each of the Parties to this Consent Decree shall bear their own attorney's fees and costs.

SO ORDERED this 27<sup>th</sup> day of Sept, 2016

\_\_\_\_\_/s/  
Gerald Bruce Lee  
United States District Judge  
United States District Judge